

Steven L. Holley (appearance *pro hac vice*)  
 (holleys@sullcrom.com)  
 Shane M. Palmer (SBN 308033)  
 (palmerash@sullcrom.com)  
 SULLIVAN & CROMWELL LLP  
 125 Broad Street  
 New York, New York 10004  
 Telephone: (212) 558-4000  
 Facsimile: (212) 558-3588

Brendan P. Cullen (SBN 194057)  
 (cullenb@sullcrom.com)  
 SULLIVAN & CROMWELL LLP  
 1870 Embarcadero Road  
 Palo Alto, California 94303  
 Telephone: (650) 461-5600  
 Facsimile: (650) 461-5700

*Attorneys for Non-Party Spotify USA Inc.*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

EPIC GAMES, INC.,

Plaintiff,

v.

APPLE INC.

Defendant.

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF SHANE M. PALMER  
 PURSUANT TO CIVIL LOCAL RULE  
 79-5(e)(1) AND IN SUPPORT OF APPLE'S  
 ADMINISTRATIVE MOTION TO  
 PARTIALLY SEAL PORTIONS OF THE  
 PARTIES' TRIAL EXHIBITS AND LIVE  
 TRIAL TESTIMONY RELATED  
 THERETO (DKT NO. 659)**

1 I, Shane M. Palmer, declare as follows:

2 1. I am an attorney at the law firm of Sullivan & Cromwell LLP, and counsel  
3 to Non-Party Spotify USA Inc. (“Spotify”). I am a member in good standing of the Bars of the  
4 States of New York and California and a member of the Bar of this Court. I submit this declaration  
5 pursuant to Local Civil Rule 79-5(e) in support of sealing certain trial exhibits that are the subject  
6 of an Administrative Motion to Seal filed by Apple Inc. (“Apple”) on May 14, 2021 (Dkt. No.  
7 659). I have personal knowledge of the facts set forth in this declaration and can testify  
8 competently to those facts.

9 2. On May 12, Apple’s counsel informed me by email that Apple intends to  
10 use at trial four summary exhibits underlying—and that are depicted in—Figures 22, 23, 24, and  
11 25 in Dr. Loren Hitt’s written direct testimony, which Apple had labelled as Exhibits DX-4793,  
12 DX-4794, DX-4975, and DX-4796. Because Apple did not provide a copy of these four exhibits  
13 to Spotify, on May 13, 2021, I emailed Apple’s counsel and asked Apple to clarify whether these  
14 four exhibits are identical to Figures 22, 23, 24, and 25 in Dr. Hitt’s written direct testimony.  
15 Apple’s counsel replied to my email on May 14, 2021, stating that “DX-4793, DX-4794, DX-4795,  
16 and DX-4796 are substantially identical to Figures 22, 23, 24, and 25, respectively, in Professor  
17 Hitt’s written direct testimony.”

18 3. On May 3, 2021, Spotify filed a declaration by Benjamin Kung, a Director  
19 in the Financial Planning & Analysis team at Spotify, providing the reasons that Spotify would be  
20 competitively harmed in its business if the information in Figures 22, 23, 24, and 25 of Dr. Hitt’s  
21 written direct testimony were to become public. (*See* Dkt. No. 574.) The Court ruled on Spotify’s  
22 requests to seal these figures in Dr. Hitt’s written direct testimony on May 9, 2021, granting  
23 Spotify’s requests to seal each of the four figures. (*See* Dkt. No. 614, at 10.)

24 4. Furthermore, according to Dr. Hitt’s written direct testimony, Figures 23  
25 and 25 summarize data contained in Exhibit DX-4641, which is a document that Spotify produced  
26 to Apple and Epic Games, Inc. (“Epic”) in response to subpoenas that Apple and Epic served on  
27 Spotify in this action pursuant to Federal Rule of Civil Procedure 45 on December 2, 2020, and  
28 December 8, 2020, respectively. Spotify moved to seal Exhibit DX-4641 on April 30, 2021 (*see*

Dkt. No. 560), and the Court ruled on Spotify's motion on May 5, 2021, granting Spotify's request to seal DX-4641 (*see* Dkt. No. 594, at 6.)

5. Because Exhibits DX-4793, DX-4794, DX-4975, and DX-4796 are substantially identical to Figures 22, 23, 24, and 25 in Dr. Hitt's written direct testimony—which the Court has already ordered sealed—these four exhibits should also be sealed in their entirety. For the Court's reference, the chart below lists the paragraphs in Benjamin Kung's May 3, 2021 declaration (Dkt. No. 574) that state the reasons why Spotify would suffer harm if Figures 22, 23, 24, and 25 of Dr. Hitt's written direct testimony became public:

Figure in Dr. Hitt's Written Direct Testimony	Corresponding Summary Exhibit	Evidence Offered in Support of Sealing
Figure 22	DX-4793	May 3, 2021 Declaration of Benjamin Kung (Dkt. No. 574) ¶¶ 7–10
Figure 23	DX-4794	May 3, 2021 Declaration of Benjamin Kung (Dkt. No. 574) ¶¶ 11–15
Figure 24	DX-4795	May 3, 2021 Declaration of Benjamin Kung (Dkt. No. 574) ¶¶ 7–10
Figure 25	DX-4796	May 3, 2021 Declaration of Benjamin Kung (Dkt. No. 574) ¶¶ 11–15

I declare under penalty of perjury that the foregoing is true and correct. Executed this May 15, 2021, at Brooklyn, New York.

/s/ Shane M. Palmer  
Shane M. Palmer

**ATTESTATION**

I, Brendan P. Cullen, am the ECF User whose ID and password are being used to file this document with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to all registered counsel. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories concur with this filing.

Dated: May 15, 2021

/s/ Brendan P. Cullen  
Brendan P. Cullen